

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SHELBY WARREN

PLAINTIFF

V.

CIVIL ACTION NO. 3:19-CV-661-KHJ-JCG

ANDREW SAUL, Commissioner of
Social Security

DEFENDANT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge John C. Gargiulo. [16]. That Report recommends that the Court grant Defendant's Motion for Summary Judgment [11] and dismiss Plaintiff Shelby Warren's appeal with prejudice. Written objections to the Report were due by December 28, 2020. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.*

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Warren applied for disability insurance benefits and supplemental security income, alleging disability beginning in December 2014. [16] at 1-2. An administrative law judge (“ALJ”) held a hearing, during which Warren and a vocational expert testified. *Id.* at 2. The ALJ denied her claims. *Id.* The Appeal Council denied review, so the ALJ’s decision became the final decision of the Commissioner of Social Security (the “Commissioner”). *Id.* Warren appealed to this Court, arguing the ALJ erred in relying on the testimony of the vocational expert that conflicted with the Department of Labor’s Dictionary of Occupational Titles (“DOT”). *Id.* at 5. The Magistrate Judge found Warren did not raise this issue during the administrative hearing, and even if she had, she failed to establish a conflict existed between the expert’s testimony and the DOT. *Id.* 5-7.

The Magistrate Judge then entered his Report and Recommendation [16] recommending that this Court dismiss Warren’s appeal with prejudice and enter final judgment for the Commissioner. Warren has filed no objections to the Report and Recommendation. After review of the record, the Court, being fully advised in the premises, finds that the Report and Recommendation is neither clearly erroneous nor contrary to law, and should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [16] of United States Magistrate Judge John C. Gargiulo, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that the Commissioner's Motion for Summary Judgment [11] is granted, and this case is DISMISSED WITH PREJUDICE.

A separate Final Judgment will issue this day.

SO ORDERED, this the 20th day of January, 2021.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE